Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1993

CRAIG TWEEDY, Petitioner

v.

AMERICAN AIRLINES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI REVIEW FROM THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI

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April, 1994

90 pp

QUESTIONS PRESENTED

1. If the state court **engine fraud claim** was replaced by injunctive fiats and unmentioned by the decisions below, were both courts defrauded and due process rights denied by insider concert, without awareness by the honorable judges of the Court of Appeals?

2. If the district judge pled for the injured party and her attorney, because the **"examination"** rule does not require brief reading by the panel judges, who would predictably honor tainted case notes and deny the appeal and its right, without oral argument, did such rule enable the purchase of judicial oppression?

3. Since three Circuits of the United States Court of Appeals guard the right of appeal and due process fairness by requiring their **judges to read the briefs**, does the "examination" rule, elsewhere, enable insider sales negating the law of the land?

LIST OF INTERESTED PARTIES

The Petitioner, Craig Tweedy, and Lillian Graham were Defendants in the District Court and Defendant/Appellants before the Court of Appeals. Lillian Graham yielded her appeal rights for the reasons of duress stated in this Petition.

The Respondent, American Airlines, Inc., is a wholly owned subsidiary of AMR Corporation. The Respondent was the Plaintiff in the District Court and Plaintiff/Appellee before the Court of Appeals.

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THE DECISIONS BELOW

The March 31, 1992 injunction of the District Court below (App. A) is unreported. The decisions the Court of Appeals for the Tenth Circuit below (App. B, C, D, E & F) are unreported.

JURISDICTION

The jurisdiction of the Supreme Court is invoked, pursuant to 28 U.S.C.

§1254, by this timely Petition for Certiorari review of the decisions of the Court of Appeals below:

The Order of October 19, 1993 (App. B), without stating a reason, refused to permit oral argument, which would have exposed the void and oppressive injunction (App. A).

Without stating a reason, the Order of November 8, 1993 (App. C) refused oral argument and the statement of reasons voidness and plan to defraud.

The December 10, 1993 Decision (App. D) did not mention the engine fraud claim, but denied the appeal conceded by the Answer Brief disguise of the engine fraud claim.

The Order of February 2, 1994 (App. E) refused the Petition for Rehearing In Banc.

The Order of March 9, 1994 (App. F) unfairly disbarred this Petitioner.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Rendered meaningless was the Due Process Clause, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness aginst himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Emphasis added).

Rendered meaningless was the right of appeal empowered by Congress, 28 U.S.C. 1291:

> The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to

the jurisdiction described in sections 1292(c) and 1295 of this title.

Likewise rendered meaningless was the Anti-Injunction Act, 28 U.S.C. §2283, which provides:

A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C §2071, Rule-Making Power Generally, provides that:

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure presribed by the Supreme Court.

28 U.S.C. §2072, Rules of Civil Procedure, is set forth in Appendix G.

THE CONFLICTING FEDERAL RULES

Local Rule 34.1.9(c) of the 10th Circuit Court of Appeals below conforms to Rule 34(a), Federal Rules of Appellate Procedure, which provides:

In general; Local Rule. Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unamimously of the opinion that oral argument is not needed. Such rule shall provide any party with an opportunity to fila a statement setting forth the reasons why oral argument shall be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard; Oral argument shall be allowed unless (1) the appeal is frivolous; or (2) the disposition or set of issues has been recently authoritatively decided; or (3) the facts and legal argument are adequately presented in the briefs and record and the decisionsl process would not be significantly aided by oral argument. (Emphasis added)

Local Rule 34 of the 4th and 5th Circuits of the United States Court of Appeals protect rights of appeal and due process fairness more affirmatively than 11th Court Rule 34(4):

The judges read all briefs prior to oral argument. Some judges also have informal pre-argument law clerk memoranda prepared and exchanged with fellow panel members prior to the call of the case. (Emphasis added)

STATEMENT OF CASE

The plan to deny due process and appeal is plainly shown by the record fact of the state court engine fraud claim. Such claim was not mentioned by the decisions below. The insider plan for judicial oppression was enabled by Rule 34(a) Federal Rules of Appellate Procedure, the "examination" rule.

On April 11, 1994, the Clerk of the Court of Appeals below received, pursuant to Rule 13, Supreme Court Rules, a request to certify and transmit the pertinent record in support of this Petition.

The Engine Fraud Claim

This Petitioner, Craig Tweedy, filed Lillian Graham's September, 1991 petition in the District Court of Tulsa County, Oklahoma in Case No. CJ-91-4125. It stated a single claim for discovered fraud, the **engine fraud claim.** The named

defendants included American Airlines, Inc. ("AA"), the Respondent herein. Lillian Graham was the sole female among thousands of aircraft mechanics at AA, until terminated. The false termination grounds included the charge that, during AA's 1985 overhaul of jet engine S/N 644980, Ms. Graham had damaged turbine disc S/N 9B6198, a part removed from said engine.

The federal district court below found Lillian Graham's work damage to said turbine disc and denied her claims. Thereafter, the U. S. DOT investigation of FAA misconduct concerning maintenance record forgeries at Eastern Airlines secured certain adjunct engine records. Such records enabled the discovery that AA's 1985 engine overhaul had not happened, as formerly represented, testified and shown by FAR engine records. Such discovery showed that said

turbine disc could not have been removed from said engine and damaged by anyone.

The district court below refused to hear the Rule 60(b) motion relief, as being "untimely" filed. As timely filed, state court petition stated the **engine fraud claim**, quoted in pertinent part, as follows:

> 4. * * the Defendants acted * * to fraudulently conceal from Ms. Graham the material fact that the Pratt & Whitney JT3 jet engine under S/N 644980 had been last overhauled in 1982, and * * was not overhauled in 1985, and the material fact that its turbine disc under S/N 9B6198 was removed, damaged and scrapped and not reinstalled in said engine after the last overhaul of American's two back-to-back 1982 overhauls of said engine, and Defendant's fraudulently represented that said engine was overhauled by American in 1985 * * generated personnel and maintenance records and charges to show Ms. Graham's work on said disc during the purported 1985 overhaul of said engine * * such fraudlent concealment required and has received the active concert of others, including the FAA * *
>
> 5. Ms. Graham knew that she had not worked on a disc removed from

> said engine in 1985, but accepted, relied upon and acted in good faith upon Defendants' representations of the underlying 1985 engine overhaul, all to * * her detriment * * *

The discovered engine fraud claim came within the settled fraud exceptions to res judicata. It clearly did not seek to relitigate any claims, or issues decided by a federal court. The Anti-Injunction Act, 28 U.S.C. §2283, prohibited jurisdiction by the district court below.

However, AA purchased injunctive fiat and appellate protection from the engine fraud claim.

The Injunctive Complaint

AA's September, 1991 injunctive complaint was filed in Case No. 91-C-762-C in the federal district court seated at Tulsa, Oklahoma. AA's pleadings named this Petitioner and Lillian Graham as defendants, but

avoided mention of the engine fraud claim. AA urged vague and unspecific assertions of state court relitigation. AA misasserted jurisdiction for the district court under the Anti-Injunction Act, 28 U.S.C. §2283. AA demanded unlawful relief. Judge Cook recused himself. Judge Thomas R. Brett accepted the case and refused to recuse.

This Petitioner and Lillian Graham defended that AA had not mentioned, nor urged an injunction against the engine fraud claim. They defended that such claim did not seek, nor need to relitigate formerly decided issues; and that AA was demanding unlawful fraud protection.

Judge Brett's recusal for his pattern of gross bias was urged. Judge Brett refused. In No. 92-5011, the Court of Appeals below refused to issue a writ of mandamus for his recusal.

The Injunctive Fiats

The March 31, 1992 injunctive order of the district court below (App. A) asserted jurisdiction by creating a relitigation exception to the Anti-Injunction Act, 28 U.S.C. §2283. The injunction avoided mention of the engine fraud claim. Judge Brett usurped power and unfairly pled for Ms. Graham and this Petitioner. "Engine" became an engine part, "turbine disc," by judicial fiat (App. A. at 1-2, 19).

They were enjoined from relitigating a disc repair claim imposed as being their state court fraud claim (App. A at 20). Judge Brett created a relitigation exception to the Act, a jurisdictional pretext. This Petitioner was sanctioned for vexatiously filing the Judge Brett's fiat (App. A at 23-25), assessed at $40,333.01. He was suspended from federal court practice for filing such

fiat and for opposing Judge Brett's fiat pattern, as cited in the sanction (App. A at 24-25).

Further Mandamus Relief Sought

Extraordinary relief from plain usurpations of power and jurisdiction was sought from the Court of Appeals below in Case No. 92-5107. The authorities of this Court applied to record fact. The engine fraud claim was unmentioned by AA and Judge Brett. Such claim was replaced by a pleading fiat, which imposed a relitigation exception to the Act, a pretext of jurisdiction. The petition was denied.

By district court motion, AA urged "monetary sanctions" and "imprisonment" for seeking appellate relief in "contemptuous" violation of quoted portions of the injunction. Judge Brett permitted such threatened duress to pend.

Such threat of imprisonment was

shown by the petition for rehearing in banc, which was denied. A second order sanctioned this Petitioner for frivolous filings, "Neither pleading was supported in law or fact." The engine fraud claim fact and this Court's authorities were rendered meaningless. Such fact shows that the circuit court judges did not read the petitions. They necessarily honored tainted case notes, the plan initiated by AA and Judge Brett.

The intent of terror worked. Raised in Nazi Germany, Lillian Graham became equally terrified of the federal courts. She yielded her appeal rights in Case No. 92-5159 soon after the appeal was timely commenced on August 13, 1992.

On December 11, 1992, this Petitioner sought extraordinary writ relief from this Court in Case No. 92-1070, which was denied. This Court misapprehended that this Petitioner's

right of appeal would be fairly heard by the Court of Appeals below. The stated predictions, to the contrary, came to pass.

The Appeal Below

The right of appeal and jurisdiction for the Court of Appeals below existed, pursuant to 28 U.S.C. §§ 1291 and 1294.

The Brief-In-Chief centered on the **engine fraud claim** being unmentioned by AA's injunctive pleadings and the March 31, 1992 injunction. Measured by citations of this this Court's authorities, such **fact** showed injunctive and sanction voidness; due process violations; and insider fraud upon the district court below by the concert of AA and Judge Brett. Said brief explained that the plan of concert necessarily extended to an honored someone within the Court of Appeals below.

As predicted, the Answer Brief could not risk mention of the engine fraud claim, without conceding the appeal grounds. Such grounds were, otherwise, effectively conceded by AA's Answer Brief. It disguised the engine fraud claim, an important fact of deception explained by the Reply Brief.

As predicted, the Court of Appeals would be deceived and defrauded by tainted case notes, unless its judges read the briefs, or heard oral arguments. Either of those due process safeguards would expose the engine fraud claim and prove the appeal grounds, if the appeal was to be fairly heard.

The Court of Appeals Decisions

As predicted, those in concert could not risk oral argument exposure. Such hearing safeguard was refused by the order of October 19, 1993 (App. B). The permitted Statement of Reasons for Oral

Argument bluntly outlined the injunctive voidness, insider concert and plan to defraud, unless oral argument was heard. The oral argument opportuntity was again refused by the order of November 8, 1993 (App. C).

As predicted, the December 10, 1993 decision (App. D) showed that the Court of Appeals had been deceived and defrauded. The engine fraud claim was not mentioned. The appeal, as effectively conceded, was denied as being "frivolous." As urged by AA, said decision imposed a sanction for frivolous filings and directed disiplinary proceedings against this Petitioner.

The Petition for Rehearing In Banc centered on the **engine fraud claim** fact applying this Court's authorities. Both showed the insider fraud upon both courts; the pretext of jurisdiction; the due process violations; the obstructions

of justice; and the federal courts being abused for oppressive purposes. It challenged the honorable circuit judges to read the briefs and to grant a rehearing and oral argument. It urged each judge of that Court to defend the proper function of law, justice and due process demanded of federal courts by the public, this Court and the Constitution.

Rehearing Denied

The February 2, 1994 order (App. E) reported that not one the 10 named judges voted for rehearing, which was denied.

Such order effectively reported that 10 judges read tainted case notes, if any document, a total panel default.

The appellate default enabled decisions endorsing injunctive fiats, which protected AA from the engine fraud claim. The right of appeal and fair

opportunity to be fairly heard did not happen in the courts below.

The Disbarment Order

Pursuant to the December 10, 1993 Decision (App. D), the March 9, 1994 Order (App. F) of the defrauded Court of Appeals disbarred this Petitioner.

The insider message was simple. Fact, law and due process do not apply, when opposing the class in which AA is a member.

SUBSTANTIALITY OF QUESTIONS PRESENTED

This Court's authorities empower and explain the issues presented by the state court **engine fraud claim.** Such claim was unmentioned by the Respondent's injunctive pleadings and March 31, 1992 injunction (App. A), yet replaced by injunctive fiats. The Answer Brief conceded the appeal from voidness by disguising such claim. Oral argument was

twice refused (App. B & C). Such claim was not mentioned by the Court of Appeals' December 10, 1993 decision (App. D). The decision unfairly denied the conceded appeal as being "frivolous" and sanctioned this Petitioner.

Such facts show a plan of insider concert, commencing with a corrupted district judge, Judge Brett. The plan filled an appellate vacuum enabled by Rule 34, Federal Rules of Appellate Procedure. It provides for an "examination of the briefs" by someone, prior to oral argument. The failure to mention the engine fraud claim shows that the panel judges did not read the briefs. The judges honored case notes showing a "frivolous" appeal. Those notes were tainted by **someone**, probably a law clerk.

The Brief-In-Chief and Reply Brief predicted insider deceit of the Court

of Appeals, unless its judges read the briefs, or heard oral argument. The engine fraud claim fact applied this Court's authorities. Both explained the (1) failure of jurisdiction under the Anti-Injunction Act, 28 U.S.C. §2283, (2) pretext of a relitigation exception to Act and (3) denials of due process. Judge Brett's fiat pattern was shown from the injunctive sanction citations. The appeal showed Lillian Graham yielding her appeal rights in terror of threatened "imprisonment" for seeking appellate relief in contempt of the void injunction.

Such import was shown by the Petition for Rehearing In Banc. Rehearing was denied by the February 2, 1994 order (App. E) of the defrauded Court of Appeals. This Petitioner was disbarred by the March 9, 1994 order (App. F) for resisting insider sales of

judicial oppression.

The right of appeal did not exist. No opportunity to be fairly heard was available. The appeal was denied, as planned, when the injunctive fiats issued. The law of the land was negated by unjudicial authority.

1. Rights Were Not Heard, By Plan

The Due Process Clause prohibits judicial power being "used for purposes of oppression," reiterated this Court in Daniels v. Williams (1986), 474 U.S. 327, 331, 88 Led.2d 662, 668, 106 S.Ct. 662.

Lillian Graham and this Petitioner were named by the injunctive pleadings of AA, the Respondent herein. AA's pleadings demanded abusive protection, while avoiding mention of the state court engine fraud claim. The insider plan for both courts operated:

> like saying to a party, appear and you will be heard; and, when he appears, saying, your appearance will not be recognized, and you will not be heard * * a mere arbitrary edict, clothed in the form of a judicial sentence;

as reasoned this Court in Windsor v. McVeigh (1876), 93 U.S. 274, 276, 23 Led 914, 918.

Judge Brett was not seeking removal from the bench, nor prosecution for concert with others to obstruct justice. The plan took a worn path, which filled a vacuum of duty, as warned by Edmund Burke to Parliment in 1775 and paraphrased as, "Evil prevails, when good men do nothing."

The appellate vacuum enabled by the "examination" rule will be further discussed, after analysis of the planned abuses of settled law.

2. Fiats Over Law

In Stoll v. Gottlieb (1938), 305 U.S. 165, 171, 59 S.Ct. 134, 137, this

Court declared that:

> A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators.

AA demanded fiat and appellate protection from the engine fraud claim, which was protected by the bothersome Anti-Injunction Act, 28 U.S.C. §2283, which provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

AA purchased the insider means to circumvent the Act's intent, as settled by this Court in two primary decisions. In Vendo Co. v. Lekro-Vend Corp. (1977), 433 U.S. 623, 630, 53 Led.2d 1009, 97 S.Ct. 2881, 2887, this Court construed that:

> Act is an absolute prohibition against any injunction of any

> state-court proceeding, unless the injunction falls within one of the three specifically defined exceptions in the Act.

The meaning of the relitigation exception, "to protect or effectuate its judgments," was settled in Chick Kam Choo v. Exxon Corp. (1988), 486 U.S. 140, 148, 108 S.Ct. 1684, 1690, 100 Led2d 127, by this Court's construction that:

> [A]n essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court. Moreover * * this prerequisite is strict and narrow. (Emphasis added)

The discovered engine fraud claim did not seek to relitigate an issue or claim "actually" decided in federal court. The district court record precluded a relitigation finding, under Rule 52(a), F.R.Civ.P. Such lack of an "essential prerequisite" imposed the Act's "absolute prohibition" of

jurisdiction for the district court below, under Vendo, supra, and Chick Kam Choo, supra.

Enabled by a dual level plan, Judge Brett sold injunctive fiats. The engine fraud claim was unmentioned. It was replaced by an imposed relitigation exception to the Act. Such concert and pretext of jurisdiction would be concealed by someone acting for the defaulting Court of Appeals below.

3. The Claim and Federal Rules Were Aborted

In addition to the Act's protection, the discovered engine fraud claim was authorized by 76, Oklahoma Statutes, §2, which provides that:

> One who willfully deceives another, with intent to induce him to alter his position to his injury and risk, is liable for any damage which he therefrom suffers.

"Fraud destroys the validity of everything into which it enters * *

perpetrated by one party to the injury of another, the offender is liable." Nudd v. Burrows (1875), 91 US 426, 23 Led 286, 290; IB Moore's Federal Practice, Res Judicata, ¶0.407, pages 282-285. "Equity will not lend itself to * fraud and historically has relieved against it," Holmberg v. Armbrecht (1946), 327 U.S. 392, 396, 66 S.Ct. 582, 585.

It is fundamental that a judge is not authorized to plead for a party. In Conley v. Gibson (1957), 355 U.S. 41, 47, 78 S.Ct. 99, 2 Led.2d 80, 85, this Court justly reasoned that:

> Following the simple guide of Rule 8(f) that "all pleadings shall be construed as to do substantial justice" * * is to facilitate a proper decision on the merits.

Judge Brett usurped power to abuse Rule 8(f), F.R.Civ.P., and unfairly plead for Lillian Graham and this Petitioner, who were enjoined from litigating a different claim than filed. By fiat, the

"engine" became its "turbine disc" part (App. A at 1-2, 19). Judge Brett imposed a state court proceeding, which sought to relitigate a formerly decided "turbine disc" damage issue (Id. at 19-20). This Petitioner was sanctioned for the "vexatious" claim created by injunctive fiat (Id. at 23-25), assessed at $40,333.01.

AA purchased fiat and appellate protection from the major liabilities presented by the discovery that the 1985 overhaul of engine S/N 644980 did not happen. Turbine disc S/N 9B6198 was not removed from said engine and damaged by anyone in 1985. The forged nature of the FAR engine records had been concealed by FAA concert with AA. The injuries to Ms. Graham, the former "female" mechanic at AA, were designed to deter female mechanics in the aviation workplace.

4. Three Circuits Guard Due Process Fairness

Local Rules 34 of the 4th, 5th and 11th Circuits, United States Court of Appeals, supra, justly warn that their **judges will read all briefs** prior to oral argument. Such duty safeguards an inherent purpose for three or more judges on a panel. By reading the briefs, each panel judge is able to understand oral argument and assure a fair decision from fact and law. Each judge is able to guard against insider mistake, bias, or corruption. Without such a reading, or oral argument, the panel judge serves no real purpose, except to tempt insider concert.

The southern circuit rules protect the right of appeal and due process fairness. They support this Court's admonition that "Congress and the federal courts" may not "fashion rules which are not supported by * * Article I or some

other section of the Constitution." Hanna v. Plumer (1965), 330 US 460, 471, 85 S.Ct. 1136, 1144. Such duty stands guard against the insider sales prohibited by Griffin v. People Of The State Of Illinois (1956), 351 U.S. 12, 16, 76 S.Ct. 585, 590, wherein this Court discussed the historic progression of due process:

> Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to this goal. This hope, at least in part, brought about in 1215 the royal concessions of Magna Charta: "To no one will we sell, to no one will we refuse, or delay, right or justice" * *
>
> Ye shall do no unrighteousness in judgment; thou shalt not respect the person of the poor, nor honour the person of the mighty; but in righteousness shalt thou judge thy neighbor. Leviticus, c. 19, v. 15. (Emphasis added).

The southern circuit rules impose the appellate duty to stand guard against the "royal concessions" by and for the

"mighty." The judges read the briefs, rather than "examination" notes, in preparation for oral argument.

5. The Purchase of Judicial Function for Oppression

The "examination" rule enabled AA to purchase "royal concessions" from Judge Brett and **someone** within the Court of Appeals below. The sale is shown by the engine fraud claim being unmentioned by the decisions below. Such fact plainly shows an insider fraud plan invalidating the decisions below, as explained by this Court in Hazel-Atlas Glass Co. v. Hartford-Empire Co. (1944), 322 U.S. 238, 246-247, 64 S.Ct. 997, 1001-1002:

> Truth needs no disguise * * Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant * * The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and

> helpless victims of deception and fraud. (Emphasis added)

The truth was disguised. Injunctive fiats replaced the claim protected by the Act, Chick Kam Choo and Conley v. Gibson, supra, The pretext of jurisdiction, unfair sanction and threats of "imprisonment" were cloaked with appellate authority. The injuries were "far more than an injury to a single litigant." Judicial function, the right of appeal and the law of the land became "impotent * * mute and helpless victims of deception and fraud.

The defrauded and defaulting Court of Appeals could not exercise the, "inherent power of a federal court to investigate whether a judgment was obtained by fraud." Universal Oil Products v. Root Refining Co. (1946), 328 U.S. 575, 580, 66 S.Ct. 1176, 1179. In Root Refining, a circuit court judge

allegedly took a bribe to provide a favorable decision. Such allegation shows the **appearance** of default by the remaining panel judges.

The **fact** of a total hearing panel default is shown by the unmentioned engine fraud claim. Such **fact** is inherently unconstitutional, when measured by the authorities cited by this Petition and this Court's reasoning in Valley v. Northern F & N Ins. Co. (1920), 254 US 348, 65 Led 297, 300, that:

> Courts are constituted by authority * * If they act beyond the authority, and certainly in contravention of it, their judgments and orders * * are not voidable, but simply void.

The "examination" rule enabled statutory law, the Constitution and the authorities of this Court to be rendered "impotent." The defaulting and defrauded Court of Appeals below did not recognize its authority of V. T. A., Inc. v. Airco,

Inc. (10th Cir. 1979), 597 F2d 220, 224-225, which summarized this Court's authorities on decisional voidness for:

> lack of subject matter jurisdiction * * plain usurpations of power, or if the court has acted in a manner inconsistent with due process of law.

Those elements, as plainly shown by the engine fraud claim, were meaningless. The judges did not read the briefs, or hear oral argument, but denied due process and endorsed voidness, by default. AA had purchased fiat and appellate protection from confident vendors.

By the rule of reason, or cunning, similar sales are most probably occurring in all circuits of the United States Court of Appeals, except three. The southern circuits require each panel **judge to read all briefs**, the public and constitutional expectation.

Such import explains why AA's

response must disguise the engine fraud claim and seek to deceive this Court.

6. This Court Did Not Anticipate The Unconstitutional Hole

"The fact that this Court promulgated the rules * * recommended by the Advisory Committee does not preclude consideration of their validity." Mississippi Pub. Corporation v. Murphree (1946), 326 U.S. 428, 444, 66 S.Ct. 242, 246. The due process test "deals neither with power or jurisdiction, but with their exercise." Kinsella v. United States (1960), 361 U.S. 234, 246, 80 S.Ct. 297, 304. Griffin v. People of the State of Illinois, supra, reasoned that due process prohibits the "royal concessions" exercised by and for the "mighty," under Rule 34, Federal Rules of Appellate Procedure. As exercised, the "examination of the briefs" by someone, opens a dark hole, by insider

plan. The plan denies due process and any meaningful right of appeal.

The engine fraud claim exposes one royal sales example. Judge Brett bragged of two others in the injunctive sanction (App. A at 24-25). As so exercised, the "examination" rule enabled an aborting of due process and appeal rights by insider fraud upon the courts. Such a dark hole cannot rationally withstand the Griffin and Kinsella tests.

The "examination" rule presumes integrity for involved personnel. It does not require the panel judges to protect the right of appeal and due process fairness by reading the briefs. Axiomatically, it permits the panel judges to default by relying upon the case notes of someone, probably a law clerk.

It unfairly appears that someone dictates the important appeal briefs for

reading, or the "frivolous" appeals for denial, without oral argument. That someone may serve the corrupt district judge, while defrauding the court of appeals. The opportunity to be fairly and adequately heard does not happen.

The engine fraud claim, for example, exposes a dual level sale of oppressive "proceedings," which are voided by the authority of Anderson Nat. Bank v. Luckett (1944), 321 US 233, 246, 88 Led 692, 705, 64 S.Ct. 599, 151 ALR 824:

> The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. (Emphasis added)

The appeal and this Petitioner had no fair and adequate opportunity to be heard. He was enjoined, sanctioned, threatened and suspended by injunctive fiats. He was sanctioned and disbarred for challenging the dark hole. His

former client, Lillian Graham, ran in utter terror from the federal court tyranny.

As exercised, the "examination" rule enables unjudicial sales operating to negate all cited authorities of law and of this Court, including Marshall v. Jerrico (1980), 446 U.S. 238, 242, 64 Led.2d 182, 100 S.Ct. 1610, 1613:

> The Due Process Clause entitles a person to an impartial and disinterested tribunal * * This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. (Citations omitted) The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the fact or the law (Citations omitted) * * it preserves both the appearance and reality of fairness (Citations omitted) * * assurance that the arbiter is not predisposed to find against him. (Emphasis added)

In short, those underlined Marshall v. Jerrico elements became **impotent**. Hanna v. Plummer, supra, operates to hold that the "examination" rule, as exercised and exercisable, is inherently contrary to the Constitution. The Kinsella test, likewise, applies the living due process principle explained in Wolfe v. People Of The State Of Colorado (1949), 338 U.S. 25, 27, 69 S.Ct. 1359, 1361:

> It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined * * (Emphasis added)

By such a "reasonable and right" and "living" due process standard, the panel judges must read the appeal briefs. It safeguards the right of appeal. It safeguards against denials of due process fairness by insider plan, mistake, or bias. Such a fundamental reading requirement lives within, and is strongly

implied by, the cited authorities of this Court. This must be so, because this Court's authorities and conferred rights may and are being rendered "impotent." The offending insider means are enabled by the "examination" rule.

No direct precedent has been found, post 1776, except from the local rules of the southern circuits, supra. Those rules safeguard the right of appeal and due process fairness. They warn that their **judges will read all briefs**, prior to oral argument. If in place below, such rules of fundamental duty would have disenabled the insider plan indisputably exposed by the engine fraud claim fact. The import of such fact is explained by this Court's authorities.

CONCLUSION

The Due Process Clause prohibits the sale of "royal concessions" by and

for the "mighty." Such a sale is clearly evidenced by the engine fraud claim being unmentioned by any decision below. The fair opportunity to be heard in either court below did not happen. The decisions below are void as "arbitrary edicts" and invalid for insider fraud in the precurement.

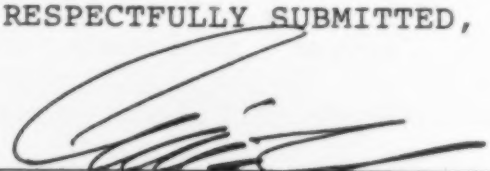
The southern rules heed the Edmund Burke warning to good men and support the Constitution. Such rules protect the right of appeal and due process fairness from insider mistake, bias or corruption.

Conversely, 1776 import arises from an unjudicial sales window opened by the "examination" rule. It enables the purchase of subtle class distinctions. One class stands quietly, but royally above settled law. The rights of the second class exist, when convenient to the first. The elusive **someone** serves

the corrupted district judge and the first class. It is as simple as filling an unconstitutional vacuum.

This Court has drawn upon the power of Leviticus, c. 19, v. 15; plus the Magna Charta, in explaining the Due Process Clause. Such merged power prohibits the unconstitutional vacuum enabled by the "examination" rule. One example of this dark hole is exposed by the engine fraud claim. It is explained by this Court's authorities. This petition for a writ of certiorari review must, therefore, be granted.

RESPECTFULLY SUBMITTED,



CRAIG TWEEDY, OBA #9145
202 Wells Building
Sapulpa, Oklahoma 74066
918-224-2222
PETITIONER, PRO SE

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of April, 1994, two true and correct copies of the foregoing Petition for Certiorari were deposited in the U. S. Mails, with proper postage thereon, and addressed to Reuben Davis and Frederick N. Schnieider III, 500 Oneok Plaza, 100 West 5th Street, Tulsa, Oklahoma 74103.

CRAIG TWEEDY

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AMERICAN AIRLINES, INC.	)	FILED
Plaintiff,	)	Mar. 31, 1992
v.	)	No. 91-C-762-B
CRAIG TWEEDY and LILLIAN GRAHAM,	)	
Defendants.	)	

ORDER

This matter comes on for consideration of Plaintiff's American Airlines, Inc. (American), request for Preliminary and Permanent Injunctions.

Essentially, this is an action wherein American seeks to enjoin the Defendant, Lillian Graham (Graham), and her attorney, Defendant, Craig Tweedy (Tweedy), from seeking to litigate in a state court proceeding (or relitigate, as Plaintiff alleges) the issue whether or not Graham damaged a 4th stage turbine

disk (fn 1: part of an airplane engine) owned by a firm called "Ports of Call" while Graham was an employee of Plaintiff, serving in part as a basis of her discharge. The Court will herein recite the chronology of the Graham/Tweedy/American Airlines legal trilogy (Graham I, II & III).

Graham I

In May, 1986, Graham filed a two-claim Complaint against American in this federal district court, 86-C-516-C, alleging; (1) employment sex discrimination and sexual harassment under Title VII of the Civil Rights Act of 1964, 28 U.S.C. 2000e et seq. and, (2) a state tort claim for the alleged intentional infliction of emotional distress. In March, 1987, American was granted partial summary judgment on the intentional infliction of emotional

distress claim. On August 11, 1989, Judge H. Dale Cook of this court entered Findings of Fact (nos. 1-50) and Conclusions of Law, finding against Graham on her Title VII claim. The gist of the Court's findings and conclusions was that Graham did indeed "violate the work rules in question" and that "the preponderance of the evidence demonstrates that plaintiff's rule violations were the cause of her discharge."

The Graham I Court made the following findings, No. 30, which reads:

> 30. On June 7, 1985, Graham worked on a fourth stage turbine disk. She reported a dent to her supervisor. On June 24, 1985, plaintiff received a five day suspension without pay. Graham's grievance was denied on September 30, 1985. (Defendant's Exhibit 70). During trial, plaintiff attempted at length to demonstrate (1) the disk on which she was working belonged to American and was distinct from a disk belonging to Ports of Call, and (2)

> she did not damage the disk. The Court has concluded that the disk involved was the Ports of Call disk, and that plaintiff damaged it. Under questions from the Court, plaintiff's memory was unclear as to precisely what happened. (See Transcript, Vol. V, pp. 486-492). Plaintiff's daughter, Sandra Whiteis, testified at trial that her mother telephoned one day from work, admitting that plaintiff had damaged a turbine disk. Viewing also the testimony of various other eyewitnesses, the Court has concluded that the preponderance of the evidence lies in defendant's favor on this issue.

See, Graham v. American Airlines, Inc., 731 F.Supp. 1494 (N.D. Okl. 1989).

On September 11, 1989, Graham filed a Notice of Appeal and Docketing Statement, appealing the August 11, 1989 Judgment to the Tenth Circuit Court of Appeals. On August 7, 1990, Graham filed her Application to Withdraw Appeal and on August 10, 1990, the Court of Appeals dismissed the appeal.

On August 9, 1990, Graham filed a

Rule 60(b), Fed.R.Civ.P. Motion to Vacate the final judgment on grounds of newly discovered evidence and fraud. On November 21, 1990, while Graham's Motion to Vacate was pending, Graham filed a Supplemental Brief in which Graham asserted as a ground of fraud that the 1985 engine repair did not occur and that therefore the finding by the Court that Graham had damaged the disk was in error.

On December 13, 1990, the District Court entered an Order denying Graham's Motion to Vacate. On January 15, 1991, the District Court denied Graham's Motion for Reconsideration. On Fedruary 27, 1991, the Court denied Graham's Motion For Clarification. On March 18, 1991, the Court denied Graham's Motion To Reconsider the February 27th Order.

On April 5, 1991, Graham filed an appeal from the denial of the Rule 60(b)

Motion. On December 23, 1991, Graham filed her Brief in Chief. American's brief was not due until February 5, 1992. On January 17, 1992, Graham filed a Motion Dismissing the appeal of the denial of the Rule 60(b) motion.

Graham II

On September 8, 1989, approximately 4 weeks after this federal district court entered its findings and conclusions in Graham I, and three days before she filed her Notice of Appeal in Graham I, Graham commenced, through the efforts of Defendant Attorney Craig Tweedy, a second action in state court (now known as Graham II), which American removed to federal Court, being assigned Case No. 89-C-815-P. On June 13, 1990 this Court granted Graham leave to file an Amended Complaint.

In Graham II, Graham alleged in the

Petition that the judgment in Graham I was the result of engine record fraud, perjury by American's witnesses and conspiracy between American, its agents and employee, George Barton, and Graham's union, the Transport Workers Union, and its agent, Dennis Quish, to deprive Graham through fraud and deceit of her employment with American.

On February 21, 1991, Judge Layn R. Phillips of this court entered summary judgment in favor of American and the other Defendants in Graham II on, among other grounds, claim and issue preclusion. Judge Phillips, in his Order, stated:

> "During the course of litigation in Graham #1 plaintiff repeatedly raised the same allegations of fraud, altered or concealed evidence and perjury which she now asserts as the basis of her claims in Graham # 2."
>
> * * * * *
>
> ". . .those "facts" were previously

> raised by plaintiff and disposed of by the court in Graham # 1 . . ."
>
> * * * * *
>
> ". . . plaintiff's papers filed in Graham # 1 consider(ed) and dispos(ed) of the same allegations that plaintiff now asserts as the basis of her claims in Graham # 2."

In Graham II, Defendants moved for summary judgment of four alternative grounds: (1) That Graham II was an impermissible collateral attack on the Graham I judgment; (2) That Graham II was barred by the doctrines of res judicata and collateral estoppel; (3) That each of Plaintiff's four claims in Graham II is legally insufficient; and (4) That Plaintiff's claims for breach of contract/breach of duty of fair representation are barred by a six month statute of limitations. The Graham II Order stated:

> "The court believes summary judgment is warranted in this case on all of the alternative grounds set forth

> in defendants' motion and brief. However, for the purposes of this order the court concludes it is unnecessary to base its decision on each of the alternative grounds because this action is an impermissible collateral attack on the prior judgment in Graham # 1, and further because the claims raised in this action either were, or could have been, raised in Graham # 1 and therefore are barred by the doctrines of res judicate (claim preclusion).
>
> Plaintiff's two response briefs, although replete with allegations of lying, cheating and concealing evidence, are woefully inadequate in responding to defendants' legal arguments."

The Graham II Order, relying upon Travlers Indem. Co. v. Gore, 761 F.2d 1549, (11th Cir. 1985), held that Graham could not relitigate the issues of intrinsic fraud, perjury and forging or altering evidence, decided against Graham in Graham I. The Court further held that relief from intrinsic fraud must be made by direct attack in the same case in which the fraud was allegedly committed,

and a party cannot use an independent action as a vehicle to relitigate issues. The Graham II Order further stated that allegations of perjury, forged and altered documents and concealed evidence raise issues of intrinsic fraud, citing Wood v. McEwen, 644 F.2d 797, 801, (9th Cir. 1981) cert.den. 455 U.S. 942, which, "to lay a foundation for an independent action, (it) must be such that it was not an issue in the former action nor could it have been put in issue by the reasonable diligence of the opposing party.", citing Travelers, supra, at 1552. The Court further concluded that perjury by a party does not meet that standard.

Judge Phillips, distinguishing the similar but separate doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion),

held that these doctrines bar Graham II.

Graham did not appeal the February 21, 1991, Graham II Order and Judgment.

Graham III

On September 10, 1991, Graham filed, again through the efforts of Defendant Attorney Tweedy, in Tulsa County, Oklahoma District Court yet another action (Graham III) against American, (fn 2: George Barton, Buck Williams and Wayne Ping, Agent for United Transport Workers Union of America are also defendants in Graham III.) CJ-91-4125. On September 27, 1991, American filed this action (Graham IV) seeking to enjoin Graham and Tweedy from proceeding in the state court action, which has been stayed, pending a ruling by this Court, by Order of the state District Judge.

In Graham III, Graham alleges that American and its agent and its employee,

George Barton, Graham's supervisor, and Buck Williams, Graham's crew chief, and Graham's union, the TWU, and its agent, Wayne Ping, committed fraud against Graham in Graham I and Graham II when American and the other Defendants "fraudulently represented" that Graham damaged the Ports of Call 4th stage turbine disk in 1985 and "fraudulently concealed" the fact that the disk had been overhauled in 1982 and not in 1985.

On January 13, and 15, 1992, this Court held evidentiary hearings on American's Motion for a Preliminary and Permanent Injunction. Through witnesses Dennis Quish and George Barton, American again established and proved that on June 7, 1985, Graham damaged the 4th stage turbine disk 9B6198 removed from an engine owned by Ports of Call, as found in Judge H. Dale Cook's Findings of Facts

30, 32 and 46 entered in Graham I.

This issue is the same issue Graham seeks to again litigate in the pending state court action, an impermissible effort. Travelers, supra. Relief from fraud must be made by direct attack in the same case in which the fraud was committed and a party cannot use an independent action for relief from judgment as a vehicle for the relitigation of issues. Id.

Graham has repeatedly raised in Graham I and Graham II allegations of fraud, altered or concealed evidence and perjury which is now asserted by Graham in Graham III. Judges Cook and Phillips considered and rejected these same claims and issues, now final, upon which Graham has predicated the pending state court action.

The terms res judicate (claim

preclusion) and collateral estoppel (issue preclusion), are related but distinct doctrines. Lujan v. United States Dept. of the Interior, 673 F.2d 1165 (10th Cir. 1982) cert.den. 459 U.S. 969, rehearing denied 459 U.S. 1229. Unless prevented by special circumstances, a plaintiff should raise all of the theories, state and federal, available to her or him in the same lawsuit. Ruple v. City of Vermillion, S.D., 714 F.2d 860 (8th Cir. 1983) cert.den. 465 U.S. 1029. Failure to so do results in claim preclusion and bars relitigation. Rulpe, supra.

Graham argues that the Cromwell principles (fn 3: Cromwell v. County of Sac, 94 U.S. 351 (1876).) relating to the effect of judgments, as quoted in In Re Four Seasons Securities Laws Litigation, 370 F. Supp. 219 (W.D. Okl., 1974),

controls the instant matter. The Court disagrees. The very language from Four Seasons, Quoting Cromwell, set forth by Graham in her pleadings, militates against her cause, as follows:

> " . . . there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action."
>
> " . . . where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." (emphasis added by Graham).

As stated, infra, Graham III presents the same claims and issues as decided in Graham I and Graham II, not different claims and issues.

Graham further argues that the

Anti-Injunction Act, 28 U.S.C. § 2283, prevents this Court from granting American the injunctive relief sought herein. That section provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

American counterpoints that the "relitigation" exception to the Anti-Injunction Act provided ample case precedent for the relief sought herein by American.

To begin with, § 2283 applies to restraints on private parties as well as those imposed directly on a state court. Henry v. First Nat. Bank of Clarksdale, 595 F.2d 291 (5th Cir. 1979), rehearing denied 601 F.2d 586, cert.den. 444 U.S. 1074. In actual application, state/federal comity dictates that

federal courts should, if warranted, enjoin the parties rather than the state court or judges where an injunction against the litigants will accomplish the same purpose. Federal Home Loan Bank Bd. v. Court of Common Pleas, 510 F.Supp. 40 (D.C.Ohio, 1981).

The relitigation exception to § 2283 is appropriate and traditionally used in the case of baseless and vexations state court proceedings. Browning Debenture Holders' Committee v. DASA Corp., 454 F.Supp. 88, (D.C.N.Y.1978), affirmed 605 F.2d 35. However, in determining its applicability, the federal court's judgment is presumably far more threatened if the state proceeding, as in the present case, involves the same issues rather than if it involves only issues that could have been, but were not raised. Delta Air

Lines, Inc. v. McCoy Restaurants, Inc., 708 F.2d 582 (5th Cir.1983).

The relitigation exception to the Anti-Injunction Act is applicable when the federal judgment is claim preclusive or issue preclusive, if the federal court, as in the matter sub judice, has actually decided the claims or issues which a federal injunction would insulate from state proceedings. Nationwide Mut. Ins. Co. v. Burke, 897 F.2d 734 (4th Cir. 1990). The central prerequisite for applying the relitigation exception to the Anti-Injunction Act is that claims or issues which the federal injunction insulates from litigation in state court proceedings actually have been decided by the federal court. Chick Kam Choo v. Exxon Corp., 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed.2d 127, (1988). Such prerequisite is strict and narrow,

requiring an assessment of the precise state of the record and of what the earlier federal order(s) actually said, and does not permit post hoc judgment as to what the order(s) intended to say. Id.

In this matter, the Court concludes the gravamen of Graham's pending state court proceeding is that the repair of, and therefore the damage to, the 4th stage turbine disk of the Ports of Call engine occurred in 1982 and could not have occurred in 1985 as found by Judge Cook in Graham I. This Court concludes, from the evidentiary hearing and the present pleadings, and also the pleadings of Graham I (including the record), Graham II and Graham III, that this is the precise issue around which the various allegations of fraud, perjury and record forging are layered. The Court futher concludes that Graham's claims and

issues in Graham III are barred by the doctrines of res judicata and collateral estoppel from Graham I and II.

The Court concludes that Defendants Craig Tweedy and Lillian Graham should be and each are herewith enjoined from proceeding further in the state court proceeding styled Lillian A. Graham v. American Airlines, Inc., George Barton, Buck Williams and Wayne Ping, Agent for United Transport Workers Union of America, CJ-91-4125, D.C. Tulsa County, State of Oklahoma. These Defendants are further enjoined from instigating, against American and those parties in privy thereto to the claims and issues herein, any further action or proceeding, in either state or federal court or any court or administrative tribunal, on these same claims and/or issues. Any violation of the Court's injunction by

either Defendant will subject the violator to appropriate sanctions.

The Court next considers American's request for the imposition of sanctions pursuant to 28 U.S.C. §1927 resulting from these Defendants' actions in bringing Graham III. The Court views the pending state court proceeding as essentially vexatious and baseless, the issues therein having been resolved against Graham in Graham I and Graham II. Part of the Court's view is shaped by the fact the Graham, while strongly protesting alleged wrongs committed against her at the hands of American and others, has never completed an appeal of the adverse decisions in either Graham I and Graham II to the Tenth Circuit Court of Appeals.

Graham did file a Notice of Appeal in Graham I, opting to withdraw the

appeal and pursue a Rule 60 motion to vacate the judgment in Graham I. In Graham II, Graham filed no Notice of Appeal. It occurs to the Court that a party litigant who alleges such deliberate maligning and intrigue being practiced upon her would surely sound out her grievances in a higher court, having achieved no satisfactory results at the District level. Further, it is obvious that Graham is not intimidated by the prospect of more litigation, which sometimes chills a litigant's appeal decision.

Three different District Judges, including the undersigned, have considered issues and claims in this ongoing repetitive saga. Despite the multiplicity of suits and judges the decision against Graham is essentially the same on the overall issue, i.e. that

Graham was discharged from American for unsatisfactory job performance and not because of sexual discrimination. One lawsuit to pursue har alleged rights was appropriate. Two lawsuits are inappropriate. Three lawsuits are clearly vexatious.

The Court concludes sanctions pursuant to 28 U.S.C. §'1927, could not properly be imposed against Defendant Lillian Graham, a non-attorney. Damiani v. Adams, 657 F.Supp. 1409, (S.C.Cal 1987); Chrysler Corp. v. Lakeshore Commercial Finance Corp., 389 F.Supp. 1216, (D.C.Wis.1975) affirmed 549 F.2d 804. However, sanctions may be imposed against counsel, where appropriate. The Court concludes Graham III was and is a baseless, unreasonable and vexatious proceeding which should not have been filed. The Court further concludes that

Defendant Craig Tweedy should be and he is required by the Court to satisfy personally the excess costs, expenses, and attorneys fees reasonably incurred in this action because of his conduct in initiating and prosecuting Graham III (fn 4: Any award of costs, fees or other expenses against Defendant Attorney Tweedy and/Defendant Lillian Graham in the state court action, if appropriate, is a matter for consideration by the state court.), which required American to seek injunctive relief in the present action. (fn 5: The Court notes Defendant Attorney Tweedy has an historical penchant for vexatious relitigation for which he has been previously, personally sanctioned. See, The Burggraf Corporation v. Goodyear Tire and Rubber, Inc., Northern District of Oklahoma, Case No. 82-C-1177-B, United States Court of

Appeals for the Tenth Circuit Case No. 90-5091; Sooner Products v. McBride, Northern District of Oklahoma, Case No. 81-C-31-B, United States Court of Appeals for the Tenth Circuit Case No. 85-1003. See attached Orders and Judgments.)

The parties shall adhere to the following schedule:

By April 10, 1992, Plaintiff shall filed its statement of excess costs, expenses and attorneys fees reasonably incurred herein.

By April 20, 1992 Defendant Attorney Tweedy shall file his response thereto.

A hearing on the excess costs, expenses and attorneys fees is set before Magistrate Judge Jeffrey Wolfe on April 28, 1992, at 9:30 a.m.

IT IS SO ORDERED this 31st day of

March, 1992.

(s) Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
OFFICE OF THE CLERK
C404 UNITED STATES COURTHOUSE
DENVER, COLORADO, 80294

ROBERT L. HOECKER
CLERK

PATRICK FISHER
CHIEF DEPUTY

October 19, 1993

Mr. Craig Tweedy
202 Wells Building
Sapulpa, Ok 74066

Mr. Frederick N. Schneider, III
Mr. Rueben Davis
Boone, Smith, Davis, Hurst U Dickman
500 Oneok Plaza
Tulsa, Ok 74103

Re: 92-5159, American Airlines, v. Tweedy, Lower Docket: 91-C-762-B.

Dear Counsel:

This case has been referred to a three0judge panel to determine whether oral argument is necessary. After examination of the briefs and record on appeal, the panel is unanimously of the opinion that oral argument is not needed.

In accordance with Fed. R. App. P. and 10th Cir. R. 34.1.9, the court intends to submit the case on the briefs and record for final disposition. Any party may, within seven days of the date of this order, file with the court a statement of reasons for oral argument.

Please call this office if you have questions.

Sincerely,

ROBERT L. HOECKER
CLERK

(s) Saundra Lee Spring
By: Deputy Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AMERICAN AIRLINES, INC.,

Plaintiff - Appellee,

v. No. 92-5159

CRAIG TWEEDY,

Defendant - Appellant

ORDER

Filed November 9, 1993

This matter comes on for consideration of appellant's statement of reasons for oral argument.

Upon considertaion whereof, oral argument is denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

By: (s) Patrick Fisher
Patrick Fisher, Chief Deputy Clerk

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AMERICAN AIRLINES, INC.,

Plaintiff-Appellee,

v.

CRAIG TWEEDY,

Defendant-Appellant.

No. 92-5157
(D.C. No. 91-C-762-B)
(N.D. Okla)

Filed Dec. 10, 1993
ROBERT L. HOECKER
CLERK

ORDER AND JUDGMENT *

Before TACHA and KELLY, Circuit Judge, and Brown, ** District Judge.

**Honorable Wesley R. Brown, Senior District Judge, United States District Court of Kansas, sitting by designation.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. An order was issued on November 8, 1993,

denying appellant's request for oral argument. The case is therefore ordered submitted without oral argument. (Emphasis added)

---

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, see res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Appellant Craig Tweedy appeals from the district court's entry of an order enjoining him from pursuing further litigation associated with the discharge of Lillian Graham from appellee American Airline's employ.1 The court also awarded fees and costs. A preliminary question has arisen concerning whether we have jurisdiction to hear this appeal. The parties have briefed the issue. We will consider that question first.

On March 31, 1992, the district court entered its order. On April 10,

1992, Mr. Tweedy filed a motion for reconsideration pursuant to Fed. R. Civ. P. 59(e). That order(sic) was denied on May 20, 1992. Rather than file a notice of appeal at that time, however, Mr. Tweedy filed a second "motion for reconsideration" on May 27, 1992. That motion was ultimately denied on July 14. The notice of appeal was filed on August 13, 1992.

Although Mr. Tweedy identified the second motion as one for reconsideration, we will construe it as a Fed. R. Civ. P. 60(b0 request. See Van Skiver v. United States, 952 F2d 1241, 1243 (10th Cir. 1991). Our consideration is limited, however, because although we have jurisdiction, we may only review the order of deniel, not the underlying judgment. Id. That review is for abuse of discretion. Campbellv. Bartlett, 975 F.2d. 1569, 1580 n. 15 (10th Cir. 1992).

The district court ruled correctly. Therefore, we affirm on the merits.

---

1 Ms. Graham was dismissed as a party through a stiputation of dismissal filed on August 27, 1992

American Airlines has also filed a motion to assess sanctions against Mr. Tweedy for filing a frivolous appeal. Mr. Tweedy has responded. "To deter frivolous and abusive litigation and promote justice and judicial efficiency, the federal courts are empowered to impose monetary sanctions, by statutes and the rules of civil and appellate procedure as well as their inherent right to manage their own proceedings." Braley v. Campbell, 832 F2d 1504, 1510 (10th Cir. 1987). The airline requests that we impose sanctions pursuant to Fed. R. App. P. 38.

This is the third time is less than two years that we have reviewed a request

for sanctions against Mr. Tweedy related to this litigation. See Nos. 91-5060, 9205107. Once again, we will grant them. Not only has Mr. Tweedy continued to pursue baseless legal arguments, he has flagrantly disregarded order of this court. In particular, there is nothing in the record indicating he has paid any of the previously imposed monetary sanctions. Furthermore, Mr. Tweedy has been advised previously that the same arguments he raises in this appeal are devoid of legal or factual support. (Emphasis added)

In our prior order granting sanctions, we assessed penalties to be paid to American Airlines. In this case, however, we will assess penalties to be paid to this court. Mr. Tweedy has unnecessarily taxed the resources of the judiciary. In light of the prior warngings he has been given, his conduct

can only be described as in bad faith. Pursuant to Local Rule 46.5, and our inherent authority to deter abusive litigation, we order Mr. Tweedy to pay the clerk of this court $3,000. Payment shall be made within twenty days of the date of this order. In addition, the clerk is directed to initiate disciplinary proceedings against Mr. Tweedy in accordance with Rule 46.5 and this Court's Plan for Attorney Disciplinary Enforcement.

Appellee's motion to dismiss is DENIED. The judgment of the United States District Court for the Northern District of Oklahoma is AFFIRMED. The motion to assess sanctions is granted. The mandate shall issue forthwith.

Entered for the Court

Deanell Reece Tacha
Circuit Judge

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AMERICAN AIRLINES, INC.,

Plaintiff-Appellee,

v. No. 92-5159

CRAIG TWEEDY,

Defendant-Appellant.

ORDER
Entered February 2, 1994

Before SEYMOUR, Chief Judge, LOGAN, MOORE, ANDERSON, TACHA, BALDOCK, BROBRY, EBEL, KELLY, Circuit Judges, and Brown, District Judge.

*The Honorable Wesley E. Brown, Senior District Judge, United States District Court for the District of Kansas, sitting by designation.

This matter comes on for consideration of appellant's petition for rehearing and suggest suggestion for rehearing in banc.

Upon consideration whereof, the petition for rehearing is denied by the panel that rendered the decision.

In accordance with Rule 35(B), Federal Rules of Appellate Procedure, the

suggestion for rehearing in banc was transmitted to all of the judges of the court who are in regular active service. No member of the panel and no judge in regular service on the court having requested that the court be polled on rehearing in banc, Rule 35, Federal Rules of Appeallate, the suggestion for rehearing in banc is denied.

Entered for the Court
ROBERT L. HOECKER, Clerk

By: (s) Patrick Fisher
Patrick Fisher,
Chief Deputy Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

IN RE: CRAIG TWEEDY,

Respondent

No. 93-672

ORDER

Before TACHA, AND BROBRY, Circuit Judges.

No response having been received to the order to show cause filed December 13, 1993, Craig Tweedy is disbarred.

Mr. Tweedy's failure to pay sanctions ordered by this court is referred to the Oklahoma Bar Association for appropriate action.

ROBERT L. HOECKER
Clerk of Court

By: (s) Patrick Fisher
Chief Deputy Clerk

Filed March 9, 1994
Robert L. Hoecker, Clerk

APPENDIX G

28 U.S.C. §2072 provides:

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions, including admiralty and maritime cases, and appeals therein, and the practice and procedure in proceedings for the review by the courts of appeals of decisions of the Tax Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions and officers.

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution [USC Const. Amend. 7].

Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported.

All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Nothing in this title, anything therein to the contrary notwithstanding, shall in any wasy limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. (Emphasis Added)